IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

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JUDGMENT

Ananda Ram.
vs.
Salag Ram.

S.B.CIVIL SECOND APPEAL NO.468/2005 UNDER SECTION 100 CPC AGAINST THE JUDGMENT AND DECREE DATED 30.9.2005 PASSED BY SHRI RAJ KUMAR BHAGAT, ADDITIONAL DISTRICT JUDGE NO.1, JODHPUR IN CIVIL APPEAL (DECREE) NO.71/2004.

DATE OF JUDGMENT ::: 5.4.2006

PRESENT

HON'BLE MR. PRAKASH TATIA, J.

Mr. KL Maheshwari, for the appellant.

Mr. GR Singhvi, for the respondent.

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BY THE COURT:

Heard learned counsel for the parties.

This second appeal is by the tenant/appellant as the two courts below vide judgments and decrees dated 24.5.2004 and 30.9.2005 decreed the suit of the respondent/plaintiff and dismissed the appeal of the appellant/defendant.

According to learned counsel for the appellant, the suit was filed by one Salag Ram claiming himself to be landlord being descendant of Kalu Ram – original landlord. The courts below found that the plaintiff failed to prove the death of Kalu Ram. According to learned counsel for the appellant, in view of the said finding, the suit of the plaintiff was not maintainable. It is also submitted that the suit property is an open land and was let out for business of fodder and, therefore, the tenancy was for agricultural purpose. The suit of the plaintiff was not maintainable because of two reasons one that the suit property is an open land which is not covered in the definition of “premises” as given under Sub-clause (a) of Sub-Section (5) of Section 3 the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 (for short 'the Act of 1950') and secondly, the tenancy was for agricultural purpose and the suit could have been filed only in revenue court.

I have considered the submissions of learned counsel for the appellant and perused the facts of the case and the reasons given by the two courts below.

First of all, it was never the case of the defendant

that the suit property was let out for agriculture purposes rather as per the written statement of the defendant himself, the suit property was let out for business of fodder and not for agriculture purpose. The open land is falling in the definition of “Premises” is apparently clear from Sub-clause (a) of Sub-Section (5) of Section 3 of the Act of 1950. So far as filing of the suit by Salag Ram is concerned, admittedly, his name has been shown in the patta of the suit property. The two courts below held that the co-owner can maintain the suit even without impleading the other co-owner, I do not find that the courts below committed any error in passing the impugned judgments which warrants interference under Section 100 CPC.

In view of the above, I do not find any substantial question of law involved in this appeal. Accordingly, this appeal, having no merit, is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya